

HOUSE BILL No. 1427

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-16.

Synopsis: Liability for health care treatment decisions. Provides for a duty of ordinary care for health insurance carriers, health maintenance organizations, and other managed care entities when making health care treatment decisions. Makes health insurance carriers, health maintenance organizations, and other managed care entities liable for harm resulting from health care treatment decisions made without exercising ordinary care. Prohibits certain actions by a health insurance carrier, a health maintenance organization, or other managed care entity.

Effective: July 1, 2003.

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January 14, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1427

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-16 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2003]:
4 **ARTICLE 16. LIABILITY FOR CERTAIN HEALTH CARE**
5 **TREATMENT DECISIONS**
6 **Chapter 1. General Provisions and Definitions**
7 **Sec. 1. This chapter does not apply to worker's compensation**
8 **insurance coverage under IC 22-3-2 through IC 22-3-7.**
9 **Sec. 2. The definitions in this chapter apply throughout this**
10 **article.**
11 **Sec. 3. "Enrollee" means the following:**
12 **(1) With respect to a health maintenance organization, a:**
13 **(A) subscriber; or**
14 **(B) dependent of a subscriber;**
15 **who is covered by the health maintenance organization.**
16 **(2) With respect to a managed care entity other than a health**
17 **maintenance organization:**



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- (A) an individual who is enrolled in a health care plan; or
 (B) a dependent of an individual described in clause (A)
 who is covered by the health care plan.

Sec. 4. "Health care plan" means a plan under which a person assumes responsibility to:

- (1) arrange for;
 (2) pay for; or
 (3) reimburse any part of the cost of;
 health care services through a health insurance carrier, a health maintenance organization, or another managed care entity.

Sec. 5. "Health care provider" has the meaning set forth in IC 34-18-2-14.

Sec. 6. "Health care treatment decision" means a determination that:

- (1) is made when medical services are provided by a health care plan; and
 (2) affects the quality of the diagnosis, care, or treatment provided to an insured or enrollee of the health care plan.

Sec. 7. "Health insurance" means one (1) or more of the kinds of insurance described in Class 1(b) and Class 2(a) of IC 27-1-5-1.

Sec. 8. "Health insurance carrier" means an insurer (as defined in IC 27-1-2-3) that provides health insurance.

Sec. 9. "Health maintenance organization" has the meaning set forth in IC 27-13-1-19.

Sec. 10. (a) "Managed care entity" means an entity that, on behalf of or as part of a health care plan:

- (1) delivers health care services to a defined enrollee population;
 (2) administers the delivery of health care services to a defined enrollee population; or
 (3) assumes the risk for the delivery of health care services to a defined enrollee population.

(b) The term does not include:

- (1) an employer purchasing coverage or acting on behalf of:
 (A) the employer's employees; or
 (B) the employees of one (1) or more subsidiaries or corporations affiliated with the employer; or
 (2) a pharmacy that holds a pharmacy permit issued by the Indiana board of pharmacy under IC 25-26-13.

Sec. 11. "Ordinary care" means the following:

- (1) With respect to:
 (A) a health insurance carrier;

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(B) a health maintenance organization; or
 (C) another managed care entity;
 the degree of care that a health insurance carrier, health
 maintenance organization, or managed care entity of ordinary
 prudence would use under the same or similar circumstances.
 (2) With respect to a person who is an employee, an agent, an
 ostensible agent, or a representative of:
 (A) a health insurance carrier;
 (B) a health maintenance organization; or
 (C) another managed care entity;
 the degree of care that a person of ordinary prudence in the
 same profession, specialty, or area of practice as the person
 would use under the same or similar circumstances.

Sec. 12. "Person" means an individual, a corporation, a partnership, a limited liability company, an unincorporated association, the state, or a political subdivision (as defined in IC 36-1-2-13).

Chapter 2. The Duty of Ordinary Care

Sec. 1. This chapter does not apply to worker's compensation insurance coverage under IC 22-3-2 through IC 22-3-7.

Sec. 2. A health insurance carrier, a health maintenance organization, or another managed care entity through which a health care plan is operated:

- (1) has the duty to exercise ordinary care when making health care treatment decisions; and
- (2) is liable for damages in compensation for harm to an insured or enrollee that is proximately caused by the failure of the health insurance carrier, health maintenance organization, or managed care entity to exercise ordinary care.

Sec. 3. A health insurance carrier, a health maintenance organization, or another managed care entity through which a health care plan is operated is liable for damages in compensation for harm to an insured or enrollee proximately caused by a health care treatment decision made by an employee, an agent, an ostensible agent, or a representative of the health insurance carrier, health maintenance organization, or managed care entity if, at the time the decision is made:

- (1) the employee, agent, ostensible agent, or representative is acting on behalf of the health insurance carrier, health maintenance organization, or other managed care entity; and
- (2) the health insurance carrier, health maintenance

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organization, or other managed care entity:

(A) has the right to exercise influence or control over the employee, agent, ostensible agent, or representative; or

(B) is actually exercising influence or control over the employee, agent, ostensible agent, or representative, resulting in the failure to exercise ordinary care.

Sec. 4. In an action brought under section 3 of this chapter that is based on a health care treatment decision allegedly made by an employee, an agent, an ostensible agent, or a representative of a health insurance carrier, a health maintenance organization, or another managed care entity through which a health care plan is operated, it is a defense that:

(1) neither:

(A) the health insurance carrier, health maintenance organization, or other managed care entity; nor

(B) the employee, agent, ostensible agent, or representative for whose conduct the health insurance carrier, health maintenance organization, or other managed care entity is allegedly liable;

controlled, influenced, or participated in the health care treatment decision in question; and

(2) the health insurance carrier, health maintenance organization, or other managed care entity did not deny or delay payment for any treatment prescribed or recommended by a health care provider to the insured or enrollee in question.

Sec. 5. Sections 2 and 3 of this chapter do not obligate a health insurance carrier, a health maintenance organization, or other managed care entity through which a health care plan is operated to provide to an insured or enrollee treatment that is not covered by the health care plan.

Sec. 6. A health insurance carrier, a health maintenance organization, or another managed care entity may not:

(1) remove a physician or other health care provider from its health care plan; or

(2) refuse to renew the status of a physician or other health care provider with the health care plan;

for advocating on behalf of an insured or enrollee for appropriate and medically necessary health care for the insured or enrollee.

Sec. 7. (a) A health insurance carrier, a health maintenance organization, or another managed care entity may not enter into a contract with a:

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1 (1) physician, hospital, or other health care provider; or
 2 (2) pharmaceutical company;
 3 that includes an indemnification or hold harmless clause applying
 4 to the acts or conduct of the health insurance carrier, health
 5 maintenance organization, or other managed care entity.

6 (b) An indemnification or hold harmless clause described in
 7 subsection (a) is void.

8 Sec. 8. A law prohibiting a health insurance carrier, a health
 9 maintenance organization, or another managed care entity from
 10 practicing medicine or being licensed to practice medicine may not
 11 be asserted as a defense by a health insurance carrier, a health
 12 maintenance organization, or another managed care entity in an
 13 action brought under this chapter.

14 Sec. 9. In an action against a health insurance carrier, health
 15 maintenance organization, or other managed care entity under this
 16 chapter, a finding that a physician or another health care provider
 17 is an employee, an agent, an ostensible agent, or a representative
 18 of the health insurance carrier, health maintenance organization,
 19 or other managed care entity may not be based solely on proof that
 20 the name of the physician or other health care provider appears in
 21 a listing of approved physicians or health care providers made
 22 available to insureds or enrollees under a health care plan.

23 Sec. 10. A person who brings an action under this chapter must:

- 24 (1) first exhaust all administrative remedies available to the
- 25 person; and
- 26 (2) comply with IC 34-18.

27 Sec. 11. This chapter does not create any liability on the part of:

- 28 (1) an employer that purchases coverage or assumes risk on
- 29 behalf of its employees;
- 30 (2) an employer purchasing group that purchases coverage or
- 31 assumes risk on behalf of its members' employees; or
- 32 (3) a pharmacy that holds a pharmacy permit issued by the
- 33 Indiana board of pharmacy under IC 25-26-13.

34 SECTION 2. [EFFECTIVE JULY 1, 2003] IC 27-16, as added by
 35 this act, applies to causes of action arising after June 30, 2003.

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